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Commenter: WorldCom, Inc.
Applicant: BellSouth
State: Louisiana
Date: August 28, 1998

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Applicant by BellSouth Corporation et al. for Provision of In-Region, InterLATA Services in Louisiana	)	CC Docket No. 97-231

REPLY COMMENTS OF WORLDCOM, INC., IN OPPOSITION TO BELLSOUTH'S SECOND APPLICATION FOR INTERLATA AUTHORITY IN LOUISIANA

Catherine R. Sloan
Richard L. Fruchterman, III
Richard S. Whitt
WORLDCOM, INC.
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036-3902

Andrew D. Lipman
Patrick J. Whittle
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
202 - 424-7500

Attorneys for WorldCom, Inc.

Dated: August 28, 1998

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EXECUTIVE SUMMARY

In its initial comments herein, WorldCom, Inc. ("WorldCom") demonstrated that the application of BellSouth Corporation *et al.* ("BellSouth") for in-region interLATA authority in Louisiana should be denied. WorldCom showed that, because only resellers provide competitive local exchange service to residential customers in Louisiana, and because PCS providers are not "competing providers" BellSouth has not satisfied the Track A requirements. In addition, WorldCom showed that the measurements BellSouth proposes for its OSS performance-- as well as its actual performance to date -- are woefully inadequate. Finally, BellSouth's insistence on physical disconnection of unbundled network elements (UNEs) and on collocation as the sole means for combining UNEs, is unlawful.

U S West and Ameritech seek to support BellSouth's arguments as to Track A eligibility, but their arguments fail. U S West misreads the applicable law, which require that one or more CLECs serve the residential market, as well as the business market, on a facilities basis. Ameritech and U S West both fail to overcome the fact that PCS does not compete with local exchange service in Louisiana, and does not constitute residential service in any event.

The Department of Justice ("DOJ") Evaluation recommends against approval of the application. DOJ's analysis bears out WorldCom's position that BellSouth OSS performance, and its measurement of that performance, is inadequate.

Ameritech's attempt to support BellSouth's position on collocation is meritless. Combining UNEs may readily be done without physically occupying BellSouth's premises and

so collocation is not required. BellSouth's use of the collocation requirement is discriminating and unlawful.

Finally, the grant of BellSouth's application patently would not be in the public interest.

Commenter: WorldCom, Inc.
Applicant: BellSouth
State: Louisiana
Date: August 28, 1998

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Second Application by BellSouth	)	
Corporation et al. for Provision of	)	CC Docket No. 98-121
In-Region, InterLATA Services in	)	
Louisiana	)	

REPLY COMMENTS OF WORLDCOM, INC., IN OPPOSITION TO BELLSOUTH'S SECOND APPLICATION FOR INTERLATA AUTHORITY IN LOUISIANA

WorldCom, Inc. hereby submits its reply comments on the second Section 271 application for in-region interLATA authority in Louisiana filed by BellSouth Corporation et al. ("BellSouth") on July 9, 1998.

INTRODUCTION

WorldCom, Inc., through its wholly-owned subsidiaries WorldCom Technologies, Inc., MFS Telecom, Inc., WorldCom Network Services, Inc. (d/b/a WilTel Network Services), and UUNET Technologies, Inc. (collectively "WorldCom"), provides a full range of telecommunications and information services, including local, intrastate, interstate, and international services. WorldCom -- with its traditional long distance operations, its competitive local exchange carrier ("CLEC") business, and its UUNet Internet service provider affiliate -- is uniquely positioned to take advantage of the opportunities presented by the 1996 Act to bring a wide range of choices for telecommunications and information services to customers everywhere.

WorldCom filed initial comments herein on August 4, 1998. In those initial comments,

WorldCom showed that BellSouth's application was fatally deficient in several areas, and that competitive conditions are a long way from the point at which the Commission can declare that the Act is fully implemented and the opportunities it provides for competitive entry into the local market are truly available.

WorldCom's initial comments showed, first, that only resellers of local service serve the Louisiana residential market today, and that resellers of residential service are not sufficient to satisfy the requirements of Section 271 that local competitors serve *both* the residential and business markets using predominantly their own facilities. Moreover, BellSouth's reliance on PCS providers as providing competition was invalid because PCS providers are not "competing providers" for purposes of eligibility for Track A, because their access and interconnection requirements are significantly different from those of wireline competitors, and because the services they offer are not a substitute for wireline service. In any event, as a factual matter, the data submitted by BellSouth failed to show that PCS providers compete with wireline service in Louisiana.

Second, WorldCom showed that the measurements BellSouth proposes for its OSS performance are insufficient in several respects, including failure to disaggregate essential information, to report the response time for rejected query notices, to measure discrimination in jeopardy notices, and to provide for performance report audits. The insufficiency of these measurements is important not only on an ongoing basis, but also because it masks the fact that, as showed by WorldCom in its initial comments, BellSouth's OSS *performance* to date has been seriously deficient. The deficiencies appear to be part of a pattern of behavior, not just isolated

incidents, and, perhaps unsurprisingly, many of the deficiencies occur in areas that would not be reflected by BellSouth's proposed performance measurements.

Third, as WorldCom showed, BellSouth's proposal to physically disconnect and reconnect, rather than electronically disconnect and reconnect, combined network elements violates the checklist, because it discriminates in favor of BellSouth's own operations (where electronic disconnection is the norm).

Finally, although the aforementioned facts would alone require the denial of BellSouth's application, WorldCom also showed that public interest factors dictate denial of the application. By relying on its regionwide performance to support the application, BellSouth clearly expects this application to be a precedent for obtaining Section 271 authority throughout its region. Once it obtains interLATA authority, it will be an easy matter for BellSouth to provide long distance service to its local customers, while continuing to thwart the emergence of local competition and maintain its monopoly in local exchange services in the region.

Various other parties also filed comments in this proceeding. Two RBOCs – Ameritech and US West – filed the most extensive comments in support of the application. The Department of Justice ("DOJ") filed its evaluation on August 19, 1998, recommending that the application be denied. As WorldCom demonstrates in these reply comments, the arguments advanced by the RBOCs in support of the BellSouth application do not hold water. The DOJ is correct: the application does not satisfy the requirements of Section 271 and should be denied.

I. CONTRARY TO THE RBOCS' CLAIMS, BELLSOUTH HAS NOT DEMONSTRATED ELIGIBILITY FOR TRACK A UNDER SECTION 271.

U S WEST Communications, Inc. ("U S West") and Ameritech Corporation ("Ameritech") assert that BellSouth has qualified for interLATA authority in Louisiana under Section 271(c)(1)(A) ("Track A"). The positions taken by U S West and Ameritech, however, are not supported by the statute. The Act does not permit reliance on the limited presence of resellers in the residential market and PCS providers to support a determination that BellSouth has satisfied Track A.

Citing the Department of Justice's ("DOJ") Evaluation filed in the Southwestern Bell Oklahoma Section 271 proceeding, U S West asserts that a Bell Operating Company ("BOC") proceeding under Track A is not required to show that *both* residential and business subscribers be served on a facilities basis by competitors. U S West Initial Comments at 3-4 (citing Addendum to DOJ Oklahoma Evaluation, CC Docket No. 97-121 (May 21, 1997), at 3). According to U S West, "the choice made by a facilities-based new entrant to provide service to only one class of customers, *i.e.*, business customers, but not to residential customers does not deprive the BOC of its ability to proceed under Track A." *Id.* at 4. But U S West's interpretation flies in the face of the statute, which clearly states that the RBOC must have interconnection agreements with competing providers of "telephone exchange service . . . *to residential and business subscribers.*" 47 U.S.C. § 271(c)(1)(A) (emphasis added). The Act then states that "*such telephone exchange* service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over their own telephone exchange facilities in combination with the resale of the telecommunications

service of another carrier." *Id.* (emphasis added). The intent of the Act is clear: for *both* residential and business customers, there must be a CLEC that provides serves entirely or predominantly using its own facilities.

This reading of the Act is, WorldCom submits, consistent with DOJ's further explanation of the Oklahoma Addendum in this proceeding. In its Evaluation herein, DOJ has explained that the Oklahoma Addendum:

> stands only for the proposition that whether an individual provider is facilities-based is to be determined based upon that provider's activities as a whole, and that a provider does not have to be both facilities-based for business customers and facilities-based for residential customers to satisfy Track A. *It does not stand for the proposition that a facilities-based provider serving business customers and a reseller serving residential customers can be combined to meet the statutory requirements.*

DOJ Evaluation, at 7-8, n.13 (emphasis added).

U S West appears to believe that if a CLEC that serves the business market using its own facilities also serves the residential market through resale it nevertheless qualifies as a "facilities-based carrier" for purposes of both the residential and business markets. U S West bootstraps this assertion into a further conclusion that the residential service requirement is satisfied if even one such carrier exists. But this would be an absurd result. DOJ has made clear that facilities-based CLECS in the business market cannot be combined with resellers in the residential market to satisfy the Act. While DOJ's explanation is not entirely explicit on this point, it patently makes no difference to the state of local competition if the combination of facilities-based business service and residential resale

is accomplished through one entity or separate entities. U S West's argument to the contrary makes no sense.

Ameritech contends that Track A is satisfied by the presence of PCS providers in Louisiana. It acknowledges that the Commission has stated: "a Section 271 applicant relying on a PCS provider as a 'facilities-based competitor' must show that the PCS provider 'offers service that both (i) satisfies the statutory definition of 'telephone exchange service' in section 3(47)(A) and (ii) competes with the telephone exchange service offered by the applicant in the relevant state." Ameritech Initial Comments at 2-3 (quoting *In the Matter of Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 6245 (1998) ("*Louisiana Order*"), at ¶ 73). Ameritech then devotes a significant portion of its comments to arguing that the service offered by a PCS provider is a "telephone exchange service" for purposes of the Commission's analysis. Nowhere, however, does Ameritech address the more important part of the test it has quoted – whether the PCS providers in Louisiana in fact compete with the local exchange services offered by BellSouth. Neither does it explain how PCS providers serve residential customers. The word "residential" implies fixed association with a particular place – the place where the end-user lives. *See Webster's II New College Dictionary* (1995) at 943. When a mobile phone is removed from a residence, *de facto*, that residence is without "telephone exchange service" (for emergency or any other purpose).

There is no basis for concluding that the five PCS carriers cited by BellSouth now provide effective facilities-based competition to BellSouth in Louisiana. Only a few months ago, the Commission noted that PCS providers are still making the transition from "a complementary telecommunications service to a competitive equivalent to wireline services."[1] U S West, in attempting to support the determination that PCS is a "competing" service, characterizes as "dramatic" two subsequent developments cited by BellSouth. U S West Initial Comments at 6. But these "developments" are far from compelling. The first is a quote from the Commission's Wireless Bureau that largely mirrors the Commission's acknowledgment of the transitional state of PCS technologies in its February *Louisiana Order;* this is not a development at all, but simply a restatement of the status quo. The second "dramatic development" is nothing more than a quotation from an advertisement by one PCS provider, exhorting customers to "make your wireless phone your only phone." *Id.* at 12.

These "developments" are insubstantial and certainly do not provide the kind of dramatic change of factual circumstances that justify considering PCS a substitute for BellSouth's wireline local exchange service. The vast majority of commenters point out that while PCS usage is growing, customers continue to consider it a supplement for wireline service rather than a substitute. Having failed to demonstrate that PCS providers qualify as competing carriers, BellSouth has not met the threshold requirements necessary to proceed under Track A.

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[1] *Louisiana Order*, 13 FCC Rcd at ¶ 73

II. AS DOJ RIGHTLY CONCLUDES, THE PERFORMANCE MEASUREMENTS BELLSOUTH PROPOSES ARE NOT SUFFICIENT, AND THE EVIDENCE SHOWS THAT IN FACT BELLSOUTH'S OPERATIONAL SUPPORT IS INADEQUATE TO ENSURE AN OPEN MARKET.

In its Evaluation, DOJ concludes that BellSouth has failed to carry its burden of proving that its wholesale support services are adequate to ensure an open market. DOJ's critique of BellSouth's evidence in this regard (Evaluation at 28-40) is thorough, persuasive and devastating. As DOJ summarizes its conclusions:

> The most probative evidence of the reliability and readiness of wholesale support processes is successful commercial usage demonstrated through a robust set of performance measures. . . . [BellSouth's e]vidence of the results of commercial usage is unconvincing because of the relatively small volume of transactions processed by those systems, the absence of data measuring some important dimensions of performance, and indications of poor or inadequate performance in some of the performance data BellSouth has provided.

DOJ Evaluation at 26-27. DOJ's analysis reveals that BellSouth's choice of performance measures tends to obfuscate, rather than clarify, the extent to which BellSouth's support services are performing, and that even under these measures, BellSouth's evidence is scanty. Even given these problems with BellSouth's evidence, the record shows that BellSouth is *not* providing adequate support services, and is in fact discriminating in favor of its own retail operations.

For example, DOJ notes that the average pre-ordering response time encountered by CLECS seeking to obtain information from customer service records is nearly twice that encountered by BellSouth's own retail representatives. (Evaluation at 29.) Moreover, BellSouth's "flow-through" rate for its own orders is much higher than that for CLEC orders, even after BellSouth made dubious

"adjustments" to the data that would tend to equalize the rates, with the flow-through rate for CLECS using the EDI interface being particularly abysmal. (*Id.* At 30-31.) DOJ finds that BellSouth takes far too long to provide information to CLECS regarding the status of orders, and its performance is getting worse, not better. (*Id.* At 31-32.) In provisioning orders, too, DOJ finds that BellSouth consistently delays and misses appointments for provisioning for CLEC customers to an extent far in excess of those for its own customers. (*Id.* At 32-34.) Finally, BellSouth's performance with regard to maintenance and repair is far poorer with regard to CLEC customers than to BellSouth's own customers. (*Id.* At 34-35.)

As WorldCom showed in its initial comments, the inadequacies of BellSouth's performance standards are not merely academic quibbles. In fact, as WorldCom demonstrated therein (at 17-19), it has encountered patterns of BellSouth conduct which are deficient in ways that would not necessarily be reflected in performance measurements and yet which have a serious and discriminatory effect on WorldCom's ability to obtain and service customers. BellSouth's failures of performance in support services remain pervasive and have the effect of thwarting, not furthering, competition by CLECS. As DOJ rightly states, "[F]ailures in the incumbent LEC's network appear to CLEC customers as CLEC failures" (*id.* at 34), and the same is true for failures of LEC support services. These inadequacies by themselves are ample ground for denying BellSouth's application.

But in addition to these demonstrated performance inadequacies, BellSouth does not even have measurements and benchmarks in place that will be adequate to show satisfactory performance of wholesale support services if and when it may come to pass in the future. (Evaluation at 38-40.)

Moreover, BellSouth has failed to institute self-executing remedies of the type need to perpetuate such performance. (*Id.* at 39.) Thus, BellSouth is far from having demonstrated that it has satisfied the requirements of Section 271.

III. CONTRARY TO AMERITECH'S CLAIMS, COLLOCATION IS NOT REQUIRED AS THE SOLE METHOD FOR COMBINING UNBUNDLED NETWORK ELEMENTS.

In its comments (at 14-15), Ameritech supports BellSouth's requirement that CLECS combine unbundled network elements ("UNEs") through collocation by claiming that collocation is the only method for combining that is authorized by Section 251 of the Telecommunications Act of 1996, 47 U.S.C. § 251. Ameritech states that this conclusion follows because "The only method set forth in the Commission's rules for obtaining a physical occupation of the incumbent's premises is collocation"; that the Court of Appeals held that the Commission had no power to require incumbent LECs to permit other carriers to "physically occupy" portions of their central offices in *Bell Atlantic v. FCC*, 24 F.3d 1441, 1446-47 (D.C. Cir. 1994); and that, accordingly, the Commission has power to require collocation solely because such power was expressly granted by Section 251(c)(6) subsequent to the *Bell Atlantic* decision. This argument is a red herring.

While it may be true that Congress passed Section 251(c)(6) to overcome the *Bell Atlantic* decision and give the Commission the express power to require collocation, it is *not* true, as Ameritech's argument implies, that combining UNEs requires a "physical occupation" of incumbent LEC premises – which is a permanent, or at least indefinite, presence, as explicitly explained in *Bell Atlantic*. As WorldCom has pointed out (Initial Comments at 24-25), it need not visit BellSouth's

premises at all; BellSouth can itself connect UNEs by electronic means when requested to do so by a CLEC. Even if temporary access to Bell Atlantic's premises by a CLEC were necessary, such temporary access is not the same as the permanent physical occupation under consideration by the *Bell Atlantic* court – and, it goes without saying, is not the same as the collocation provided for under 47 C.F.R. § 51.321(b)(1). Indeed, as quoted by Ameritech itself, that rule speaks to when the collocating carrier is placing "their own connecting transmission facilities" on the incumbent's premises – not, as is the case here, where the CLEC is merely desiring to connect two UNEs, both of which are provided using facilities that remain the property of the incumbent LEC.

As WorldCom pointed out in its Initial Comments herein (at 19-27), BellSouth is using its collocation and physical disconnection requirements as a means of discriminating against CLECS by providing them service that is inferior to the service it provides itself. The DOJ concurred in this view, noting that "BellSouth's policies will inevitably slow the process of competitive entry, raise the cost of entry, and impair the quality of services by carriers seeking to combine UNEs." Evaluation at 12; *see generally* Evaluation at 9-18. Ameritech's argument that the law not only permits but mandates collocation is patently specious.[2]

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[2] One state commission in BellSouth's service territory has recently expressly held that BellSouth's attempt to impose such a collocation requirement "is both discriminatory and unwarranted," and violates the Act. *Investigation Regarding Compliance of the Statement of Generally Available Terms of BellSouth Telecommunications, Inc. with Section 251 and Section 252(d) of the Telecommunications Act of 1996*, Case No. 98-348 (Ky. PSC, Aug. 21, 1998), slip op. at 7.

IV. BELLSOUTH'S PUBLIC INTEREST ARGUMENTS DO NOT JUSTIFY ITS ENTRY INTO THE INTERLATA MARKET AT THIS TIME.

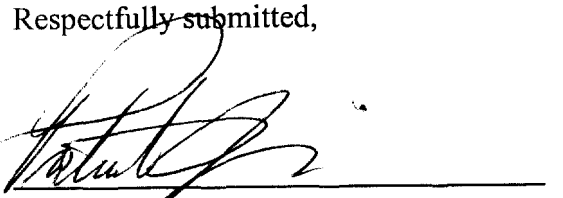
In its initial comments, WorldCom urged the Commission not to reach the public interest test in connection with BellSouth's application. The public interest analysis only takes place once a BOC has satisfied the other requirements of Section 271. Ameritech Michigan Order ¶ 381. BellSouth has not, and thus the public interest issue need not be reached. WorldCom demonstrated, however, that, if the Commission decides to reach the public interest test, it should conclude that interLATA entry by BellSouth should not be allowed at this time because it would harm the public interest. (WorldCom Initial Comments at 27-33.)

The DOJ correctly points out that BellSouth's "public interest" arguments are far from adequate, in that they focus solely on increasing competition in the already-competitive long distance marketplace and ignore that allowing BellSouth to evade the Act's requirements with regard to opening the local markets would clearly harm the public interest, and such harm outweighs the incremental increase in long distance competition that would result. WorldCom submits that the lack of realistic choices for *local* telephone customers in Louisiana provides an additional reason for rejecting BellSouth's "public interest" arguments.

CONCLUSION

For the reasons given, the Commission should deny BellSouth's application for interLATA entry.

Respectfully submitted,



Andrew D. Lipman
Patrick J. Whittle
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007-5116
202-424-7500

Attorneys for WorldCom, Inc.

Catherine R. Sloan
Richard L. Fruchterman, III
Richard S. Whitt
WORLDCOM, INC.
1120 Connecticut Ave., N.W.
Washington, D.C. 20036-3902

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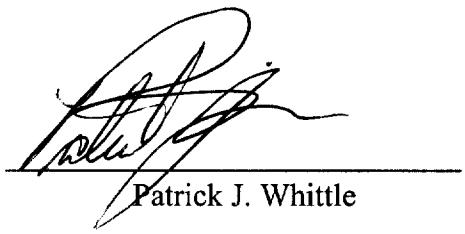
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing REPLY COMMENTS OF WORLDCOM, INC. IN OPPOSITION TO BELLSOUTH'S SECOND APPLICATION FOR INTERLATA AUTHORITY IN LOUISIANA were served to each on the attached mailing list, either by Hand Delivery (as designated with an asterisk (*)), or by First Class Mail, postage prepaid, this 28th day of August, 1998.



Patrick J. Whittle

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